

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
MARITEL, INC.)	WT Docket No. 04-257
and)	RM-10743
MOBEX NETWORK SERVICES, LLC)	
)	
Petitions for Rule Making to Amend the)	
Commission's Rules to Provide Additional)	
Flexibility for AMTS and VHF Public Coast)	
Station Licensees)	

NOTICE OF PROPOSED RULE MAKING

Adopted: July 8, 2004

Released: July 30, 2004

Comment date: 60 days after publication in the Federal Register

Reply comment date: 90 days after publication in the Federal Register

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Notice of Proposed Rule Making*, we address petitions for rulemaking that were filed by Maritel, Inc. (Maritel), a VHF public coast (VPC) station licensee, on May 16, 2003, and Mobex Network Services, LLC (Mobex), an automated maritime telecommunications system (AMTS) station licensee, on June 13, 2003.¹ Both petitions seek additional flexibility for public coast station licensees. We propose to amend our rules to permit VPC and AMTS licensees to provide private mobile radio service² to units on land. The rule changes that we propose in this *Notice of Proposed Rule Making* further the Commission's ongoing goal of establishing a regulatory framework that will enhance operational flexibility and enable maritime spectrum licensees to compete more effectively against other commercial mobile radio service (CMRS) providers. We tentatively conclude that the actions proposed

¹ Our proposals and the other actions we take herein do not bear on the pending proceedings involving Maritel and the Coast Guard concerning the universal shipborne automatic identification system (AIS). See Wireless Telecommunications Bureau Seeks Comment on MarITEL, Inc. Petition for Declaratory Ruling Regarding the Use of Maritime VHF Channel 88, *Public Notice*, 18 FCC Rcd 14250 (WTB PSPWD 2003); Wireless Telecommunications Bureau Seeks Comment on MarITEL, Inc. Petition for Declaratory Ruling and National Telecommunication and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B, *Public Notice*, 18 FCC Rcd 23260 (WTB PSPWD 2003); Wireless Telecommunications Bureau Seeks Comment on MarITEL, Inc. Proposal to Serve as Automatic Identification System (AIS) Frequency Coordinator, *Public Notice*, 18 FCC Rcd 24057 (WTB PSPWD 2003); Wireless Telecommunications Bureau Seeks Comment on MarITEL, Inc. Proposal for Shared Use of Maritime VHF Channels 87B and 88B for Automatic Identification Systems, *Public Notice*, 19 FCC Rcd 2666 (WTB PSCID 2004). We will address those issues elsewhere.

² Private mobile radio service is mobile radio service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service. Private mobile radio service includes not-for-profit land mobile radio and paging services that serve the licensee's internal communications needs, and mobile radio service offered to restricted classes of eligible users. 47 C.F.R. § 20.3.

herein will not adversely affect the essential purpose of the Maritime Services, *i.e.*, to promote safety of life and property at sea and on inland waterways.³ At the same time, we tentatively conclude that Maritel's suggested broader rule changes, which would permit VPC licensees essentially to choose whether or not to comply with various regulatory obligations in Part 80, which governs the Maritime Services, are not in the public interest. We invite comment on this tentative conclusion, in particular our belief that the changes advocated by Maritel could undermine the purpose of the Maritime Services, to which we reiterate our commitment.

II. BACKGROUND

2. The Maritime Services provide for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways.⁴ There are two types of coast stations: public coast stations and private coast stations. Generally, public coast stations are CMRS providers that allow maritime vessels to send and receive messages and to interconnect with the public switched network.⁵ Each public coast station has exclusive use of one or more public correspondence channels within its service area or region of operation. By contrast, private coast stations do not offer common carrier services, and may not charge fees for the provision of communications services. Private coast stations instead serve vessels' business, maritime control, and operational needs. The frequencies designated for private coast operations are assigned on a shared, rather than exclusive, basis.

3. This *Notice of Proposed Rule Making* addresses VHF public coast stations and AMTS stations.⁶ VHF coast stations may use VHF band frequencies (156-162 MHz) to serve a port or coastal area. These maritime frequencies are allocated internationally to facilitate interoperable radio communications among vessels of all nations and stations on land worldwide. In this connection, the International Telecommunication Union Radio Regulations set forth the particular frequencies to be used for maritime communications, the geographic regions where these frequencies may be used, and the types of communications (*e.g.*, voice, telegraph, data) that may be transmitted on each frequency. AMTS uses different spectrum (217/219 MHz). This service was established in 1981 as an alternative to VHF public coast service.⁷ AMTS relieves vessel operators from having to change frequencies and contact new coast

³ Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6687 ¶ 3 (2002) (*Fifth Report and Order*).

⁴ For a fuller description of the Maritime Services, see Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 16953-54 ¶¶ 4-6 (1997) (*Second Report and Order*).

⁵ See Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1448 ¶ 83 (1994); see also 47 C.F.R. § 20.9(a)(5).

⁶ This *Notice of Proposed Rule Making* does not relate to a third category of public coast stations, high seas public coast stations. High seas stations may use low frequency (.100-.160 MHz), medium frequency (.405-.525 and 2 MHz), and high frequency (HF) (4, 6, 8, 12, 16, 18/19, 22, and 25/26 MHz) band frequencies to serve vessels on the high seas, often hundreds or even thousands of miles from land. These stations are not permitted to serve units on land. See *Second Report and Order*, 12 FCC Rcd at 17020; see also Technology for Communications International, *Order*, 14 FCC Rcd 16173, 16176-77 ¶ 8 (WTB PSPWD 1999) (denying a request for a waiver to permit a high seas public coast station to serve units on land, and explaining that, because of the propagation characteristics of HF signals, interference to international communications is a possibility associated with service to units on land using HF frequencies not presented by VHF land mobile service). Consequently, the rule changes proposed herein to allow more flexibility to coast stations that serve units on land do not apply to high seas stations.

⁷ See Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) Along the Mississippi River and Connecting Waterways, *Report and Order*, GEN Docket No. 80-1, 84 FCC 2d 875, 876 ¶ 2, on reconsideration, *Memorandum Opinion and Order*, GEN (continued....)

stations (which may have different call set-up and billing procedures) during their travel along waterways.⁸ While AMTS was intended primarily to be a public correspondence service like the VHF public coast service, the Commission did not limit AMTS stations to public correspondence; rather, it gave licensees the option of operating private coast station systems to satisfy ships' operational and business requirements.⁹ However, each system of AMTS stations must be interconnected to the public switched network.¹⁰

4. In 1997, the Commission amended its rules to permit VPC and AMTS licensees to serve fixed and mobile units on land, in addition to maritime vessels.¹¹ The Commission's goal was to permit licensees to make use of excess channel capacity so that the stations would be more economically viable and competitive with other CMRS providers, provided that serving units on land did not negatively affect vessel safety.¹² Consequently, in order to preserve the core purpose of the internationally allocated marine radio spectrum, the Commission imposed certain conditions on the provision of service to units on land. For example, land units are limited to the Part 80 power limit of twenty-five watts, and public coast stations serving units on land must afford priority to marine-originating communications.¹³

5. Originally, both VPC and AMTS stations were licensed on a site-by-site basis. In 1998, the Commission adopted a geographic area licensing approach for VPC stations.¹⁴ It also modified the rules to provide VPC geographic area licensees the option to use their spectrum to provide either commercial or private mobile communications, instead of only public correspondence.¹⁵ In 2002, the Commission adopted a geographic area licensing approach for AMTS stations.¹⁶

III. DISCUSSION

6. *Private mobile radio service for units on land.* Under the current rules, VPC and AMTS stations may provide either commercial service or private correspondence service¹⁷ to maritime units, but

(...continued from previous page)

Docket No. 80-1, 88 FCC 2d 678 (1981), *aff'd sub nom.* WJG Tel. Co. v. FCC, 675 F.2d 386 (D.C. Cir. 1982) (*IWCS Report and Order*). AMTS stations operate in the 217-220 MHz band. See 47 C.F.R. § 80.385.

⁸ See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-372, 6 FCC Rcd 437, 437 ¶ 3 (1991).

⁹ *IWCS Report and Order*, 84 FCC 2d at 899-900 ¶¶ 91-92; see also 47 C.F.R. § 80.475(c).

¹⁰ Warren C. Havens, *Order*, 18 FCC Rcd 7006, 7008 ¶ 5 (WTB PSPWD 2003); Warren C. Havens, *Letter*, 17 FCC Rcd 15903, 15904 (WTB PSPWD 2002) (citing *IWCS Report and Order*, 84 FCC 2d at 881 ¶ 19); see 47 C.F.R. § 80.5 (defining an AMTS as "an automated, integrated and interconnected maritime communications system") (emphasis added).

¹¹ See *Second Report and Order*, 12 FCC Rcd at 16965 ¶ 24; see also 47 C.F.R. § 80.123.

¹² *Second Report and Order*, 12 FCC Rcd at 16965 ¶¶ 24-25.

¹³ *Id.* at 16965-66 ¶¶ 25-26.

¹⁴ See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19855-56 ¶ 1 (1998) (*Third Report and Order*).

¹⁵ See 47 C.F.R. § 20.9(b); see *Third Report and Order*, 13 FCC Rcd at 19879 ¶ 54.

¹⁶ *Fifth Report and Order*, 17 FCC Rcd at 6718 ¶ 79.

¹⁷ Private correspondence consists of communications serving the user's business and operational needs.

may provide only commercial service to units on land.¹⁸ Section 80.123 of the Commission's Rules, which permits VPC and AMTS licensees to serve fixed and mobile units on land on a subsidiary basis, specifically authorizes only "*public correspondence* service to stations on land."¹⁹ In addition, Section 80.475(c) of the Commission's Rules, which allows AMTS licensees to provide *private mobile* communications, by its terms limits the permissible communications to "the operational requirements of *ships* including transmissions of fuel, weather, position and supply reports."²⁰

7. We note, as an initial matter, that the prohibition against public coast stations providing private mobile radio service to land units appears to result from the interplay of sequentially enacted regulations. For example, as noted above, Section 80.475(c) expressly limits the provision of AMTS private correspondence service to "ships." When the predecessor of Section 80.475(c) was enacted in 1981, however, AMTS stations could provide service only to marine vessels, because the Rules did not permit service to units on land. Consequently, the rule's language limiting private communications to the operational needs of "ships" did not have any limiting effect on what units could receive AMTS private correspondence service. The reference to "ships" took on this limiting effect in 1996, when Section 80.123 permitted AMTS service to units on land. Similarly, at the time Section 80.123 was written, VPC stations could provide only commercial services, so the fact that it expressly authorized only "public correspondence" services to stations on land did not create any distinction between the VPC stations could provide to units on land and the services that they could provide to maritime vessels. Only after VPC geographic licensees were permitted to choose between commercial and private mobile radio services in 1998 did the language take on this possibly-unintended effect. The adoption of geographic licensing for VPC and AMTS stations, which expressly contemplated operations in areas with no navigable waterways,²¹ magnified the potential effects of the existing regulatory language. Thus, the Commission has not specifically addressed whether VPC and AMTS stations should be permitted to provide private mobile radio service to land units.

8. We agree with Mobex²² and Maritel²³ that prohibiting VPC and AMTS licensees from providing private correspondence to mobile units on land appears to conflict with the Commission's goal of providing CMRS licensees with optimal operational flexibility in utilizing their authorized spectrum.²⁴ Maritel argues that the advent and proliferation of other CMRS providers, such as cellular and personal communications services, has drastically reduced the market for VPC interconnected ship-to-shore voice communications.²⁵ As Maritel argues, amending the rules so that VPC licensees can elect to provide

¹⁸ Consequently, licensees that seek to use VPC and AMTS stations for private land mobile radio services, including public safety services, currently must request a waiver of the Commission's Rules. See, e.g., Wireless Telecommunications Bureau Seeks Comment on the Commonwealth of Virginia's Request for Waiver of Commission Rules to Use VHF Public Coast Frequencies to Support Public Safety Activities, *Public Notice*, 19 FCC Rcd 5353 (WTB PSCID 2004).

¹⁹ 47 C.F.R. § 80.123 (emphasis added).

²⁰ 47 C.F.R. § 80.475(c) (emphasis added).

²¹ See *Third Report and Order*, 13 FCC Rcd at 19866 ¶ 25; *Fifth Report and Order*, 17 FCC Rcd at 6703 ¶ 37; see also 47 C.F.R. §§ 80.371(c)(4), 80.385(b) (permitting operation anywhere within the geographic licensee's region).

²² Mobex Petition at 4.

²³ Maritel Petition at 3-4.

²⁴ See also American Mobile Telecommunications Association (AMTA) Comments at 2-3; Dale Reich Comments at 1. We also note that the Commission, while not addressing the issue directly, appeared amenable to private land mobile service on VPC frequencies. See *Third Report and Order*, 13 FCC Rcd at 19860 ¶ 11 (indicating that private land mobile radio users would have access to VPC spectrum via partitioning and disaggregation).

²⁵ Maritel Petition at 2.

private or common carrier service to units on land will promote effective and intense utilization of VPC spectrum,²⁶ which is consistent with the underlying purpose of Section 80.123 of permitting VPC and AMTS licensees to make use of excess channel capacity so that they will be more economically viable and competitive with other CMRS providers, so long as such operations do not decrease vessel safety.²⁷ Therefore, we propose to delete the reference to "public correspondence" in Section 80.123, and remove the discussion of "ships" in Section 80.475(c). We also propose to amend Section 20.9 to give AMTS geographic licensees the same flexibility as VPC geographic area licensees to choose between commercial and private services. We believe that such action is consistent with the Commission's intent when it adopted a geographic licensing approach for AMTS stations similar to and premised on that which it adopted earlier for VPC stations.²⁸ We seek comment on these tentative conclusions. In addition, we seek comment on how VPC and AMTS stations can technically and practically serve both maritime and land mobile interests in areas near navigable waterways, especially in the VPC service, where maritime and land mobile users may utilize different equipment. We also seek comment on how these providers can ensure that priority would always be given to maritime communications.

9. In addition, we agree with Mobex that AMTS stations providing private correspondence service should not be required to be interconnected to the public switched network.²⁹ Mobex states that the end-users of many private land mobile radio applications, such as mobile data, automatic vehicle location systems, supervisory control and data acquisition systems, and "one-to-many" dispatch, neither require nor desire interconnection.³⁰ As Mobex also points out, we do not prohibit any other CMRS operator from providing both interconnected and non-interconnected services.³¹ Consequently, we propose to retain the interconnection requirement for AMTS licensees providing public correspondence service, but amend Section 80.475 to provide that such licensees may also provide non-interconnected service, and that AMTS licensees providing only private mobile radio service need not be interconnected. In this regard, we also propose to revise Section 80.5 to remove "interconnected" as a required characteristic of all AMTS operations.

10. *Proposals for additional operational flexibility.* We note that Maritel proposes additional changes to the service rules governing VPC licensees. Generally, Maritel proposes to permit VPC geographic area licensees to choose whether to provide maritime public correspondence services. In addition, it asserts that Part 80 regulatory obligations, particularly Part 80 equipment standards and watch requirements, should not apply to VPC licensees that do not provide maritime public correspondence services.³² Maritel recommends that a VPC licensee be governed by the rules and decisions applicable to the particular type of service that it has elected to provide.³³ Therefore, under Maritel's suggested approach, to the extent that a VPC licensee does not elect to provide maritime public correspondence service, it would not be obligated to comply with those Part 80 rules that govern that service, including the obligation to employ equipment that is type accepted under those rules.³⁴ Maritel states that such

²⁶ *Id.* at 6.

²⁷ *Second Report and Order*, 12 FCC Rcd at 16965 ¶¶ 24-25.

²⁸ *See Fifth Report and Order*, 17 FCC Rcd at 6696 ¶¶ 23-24.

²⁹ Mobex Petition at 4.

³⁰ *Id.*

³¹ *Id.*

³² Maritel Petition at 5-8.

³³ *Id.*

³⁴ *Id.*

flexibility would be consistent with the Commission's goal of providing CMRS licensees with a flexible approach to spectrum use.³⁵

11. In addition, Maritel argues that it is no longer necessary for the Commission to effectively require the provision of maritime public correspondence services on VPC spectrum because the United States Coast Guard's National Distress and Response System Modernization Project will meet all needs related to safety and distress communications.³⁶ Along these lines, Maritel contends that watch requirements in particular, and distress and safety communications in general, are the responsibility of the Coast Guard, and not public coast station licensees.³⁷

12. Most commenters generally agree that such flexibility is appropriate in light of the proliferation of other CMRS providers, such as cellular and personal communications services, and the reduced demand for VPC interconnected ship-to-shore voice communications.³⁸ However, one commenter opposes the Maritel proposal. He argues that VPC spectrum should remain dedicated primarily to maritime public correspondence in order to remain consistent with international allocations, and because VHF maritime frequencies are becoming increasingly congested, and other CMRS providers do not provide reliable coverage over coastal waters.³⁹

13. We decline to propose the rule changes requested by Maritel at this time. As noted above, when the Commission permitted VPC stations to serve units on land,⁴⁰ and again when it converted VPC licensing to a geographic approach,⁴¹ it remained committed to maintaining the core purpose of the Maritime Services—providing for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways. We recently reiterated this commitment in another proceeding, when we rejected Maritel's suggestion that the watch requirement be modified for VPC stations that serve units on land.⁴² We are concerned that implementation of Maritel's proposed rule changes would undermine that purpose by, in effect, reallocating Part 80 spectrum for primary land mobile radio use. That demand for VHF maritime public correspondence services has decreased does not decrease our commitment to marine safety. We recognize that upwards of ten million U.S. and foreign mariners in American waters have radios that operate in this spectrum, and we further recognize the importance of ensuring that there remains adequate, available internationally-interoperable spectrum to the American maritime public to meet their common needs, and for purposes of safety and security. Although we are here proposing to relax the Part 80 regulations to allow for more efficient use of the spectrum, we are not considering actions that would effectively create a *de facto* reallocation or otherwise remove this spectrum from the maritime community. Moreover, we believe that the rule changes proposed above regarding land-based private mobile radio services will afford Maritel much of the flexibility it seeks. Because we believe that our proposed amendments will ensure that the Part 80 rules fully support flexible

³⁵ *Id.* at 7-8.

³⁶ *Id.* at 8-9.

³⁷ *Id.* at 9-10.

³⁸ See AMTA Comments at 3-4; Mobex Comments at 1-2; Motorola, Inc. Comments at 1-2; Paging Systems, Inc. Comments at 2-3.

³⁹ Tony Drake Comments at 1-2.

⁴⁰ See *supra* para. 5.

⁴¹ See *Third Report and Order*, 13 FCC Rcd at 19856 ¶ 2, 19859-60 ¶ 10, 19861-62 ¶ 14, 19866 ¶ 25, 19880 ¶ 57; see also *Fifth Report and Order*, 17 FCC Rcd at 6707 ¶ 48.

⁴² See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Second Report and Order*, *Sixth Report and Order*, and *Second Further Notice of Proposed Rule Making*, WT Docket No. 00-48, 19 FCC Rcd 3120, 3150 ¶ 57 (2004).

use of AMTS and VPC spectrum, we tentatively conclude that Maritel's proposal to permit VPC licensees in certain instances to be governed by rule sections other than Part 80 is inappropriate and unnecessary. We seek comment on this tentative conclusion.

14. Finally, we note that the ITU *Radio Regulations* Appendix 18 does allow the VPC channels under consideration in this proceeding to be used for port operations and ship movement services, and further allows operation in single channel as well as two-channel mode. We generally have sought to conform our allocations of maritime spectrum to the ITU *Radio Regulation* as closely as possible, consistent with the public interest, particularly where international users and safety may be affected. We therefore seek comment on whether we should align our allocation of this spectrum with that of the ITU with respect to use of the spectrum for port operations and ship movement services, in the interest of promoting compatibility with international shipping and increased flexibility.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

15. Appendix A contains an Initial Regulatory Flexibility Analysis (IRFA) with respect to this *Notice of Proposed Rule Making*. As required by the Regulatory Flexibility Act,⁴³ the Commission has prepared the analysis of the possible impact on small entities of the rules and proposed rules set forth in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice of Proposed Rule Making*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Notice of Proposed Rule Making*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

B. Paperwork Reduction Act of 1995

16. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-193, *see* 44 U.S.C. § 3506(c)(4).

C. Ex Parte Rules - Permit-But-Disclose Proceeding

17. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.⁴⁴

D. Comment Dates

18. Pursuant to Sections 1.415 and 1.419 of our Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before [60 days after Federal Register publication] and reply comments on or before [90 days after Federal Register publication]. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies.

⁴³ See 5 U.S.C. § 601 *et. seq.*

⁴⁴ See 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

19. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Washington, D. C. 20554. Filings can be sent first class by the U.S. Postal Service, by an overnight courier or hand and messenger-delivered. Hand and messenger-delivered paper filings must be delivered to 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. Filings delivered by overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

20. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Jeffrey Tobias, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, 445 12th St., S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM-compatible format using Microsoft Word 2002 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 04-257), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

E. Ordering Clauses

21. Authority for the issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

22. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in the *Notice of Proposed Rule Making* and contained in Appendix B.

23. IT IS FURTHER ORDERED that the petition for rulemaking filed by Maritel, Inc. on May 16, 2003 IS GRANTED IN PART and DENIED IN PART, to the extent set forth herein, and the petition for rulemaking filed by Mobex Network Services, LLC on June 13, 2003 IS GRANTED.

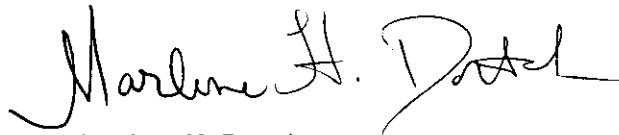
24. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

F. Contact Information

25. For further information, contact Jeffrey Tobias, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233, jeff.tobias@fcc.gov.

26. Alternative formats (computer diskette, large print, audiocassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This *Notice of Proposed Rule Making* can also be downloaded at: <http://www.fcc.gov/dtf/>.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Marlene H. Dortch". The signature is fluid and cursive, with the first name "Marlene" being the most prominent part.

Marlene H. Dortch
Secretary

APPENDICES

APPENDIX A – INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the RFA,⁴⁵ the Commission has prepared this present IRFA of the possible significant economic impact on small entities of the policies and rules proposed in the *Notice of Proposed Rule Making*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice of Proposed Rule Making* provided in paragraph 17 of the item. The Commission will send a copy of the *Notice of Proposed Rule Making*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the *Notice of Proposed Rule Making* and IRFA (or summaries thereof) will be published in the Federal Register. See *id.*

A. Need for, and Objectives of, the Proposed Rules:

Our objective is to determine whether it is in the public interest, convenience, and necessity to provide VHF public coast stations and AMTS stations with the additional flexibility to offer non-interconnected private communications to units on land.

B. Legal Basis:

1. Authority for issuance of this item is contained in Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴⁹

The proposed rules would affect licensees using AMTS and VHF public coast (VPC) spectrum. In the *Third Report and Order* in PR Docket No. 92-257, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service

⁴⁵ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁴⁶ 5 U.S.C. § 603(b)(3).

⁴⁷ 5 U.S.C. § 601(6).

⁴⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

⁴⁹ Small Business Act, 15 U.S.C. § 632 (1996).

providers. See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19893 (1998) (citing 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322). Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirty-five VPC licensees. It is unlikely that more than seven more AMTS or five more VPC licensees will be authorized in the future. Therefore, we estimate that no fewer than fifty small entities will be affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

This *Notice of Proposed Rule Making* neither proposes nor anticipates any additional reporting, recordkeeping or other compliance measures.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered:

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The *Notice of Proposed Rule Making* solicits comment on a variety of alternatives set forth herein. For example, the Commission seeks comment on its proposal to reduce the regulatory burden for all entities, including small entities, by eliminating the current requirement that Part 80 public coast licensees provide interconnected service to land units. It also seeks comment on the proposal of Maritel, Inc. that licensee elect either CMRS or PMRS and then be regulated by the Commission rule's that govern that service.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules:

None.

APPENDIX B – PROPOSED RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 20 and 80 are proposed to be amended as follows:

Part 20 – Commercial Mobile Radio Services

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: Secs. 4, 10, 251-254, 303, and 332; 47 U.S.C. 154, 160, 251-254, 303, and 332, unless otherwise noted.

2. Section 20.9 is amended by revising paragraphs (b) and (b)(1) to read as follows:

§ 20.9 Commercial mobile radio service.

* * * * *

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station geographic area licensees or applicants, and automated maritime telecommunications system (AMTS) geographic area licensees or applicants, proposing to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service, VHF Public Coast, and AMTS Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service, VHF Public Coast Station, or AMTS service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3. Any application requesting to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

* * * * *

Part 80 – Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.5 is amended by revising the definition of automated maritime telecommunications system as follows:

§ 80.5 Definitions.

* * * * *

Automated maritime telecommunications system (AMTS). An automatic, integrated maritime communications system.

* * * * *

3. Section 80.123 is amended by revising the introductory paragraph to read as follows:

§ 80.123 Service to stations on land.

Marine VHF public coast stations, including AMTS coast stations, may provide service to stations on land in accordance with the following:

* * * * *

4. Section 80.475 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

* * * * *

(c) In lieu of public correspondence service, an AMTS system may provide a private mobile radio service. However, such communications may be provided only to stations whose licensees make cooperative arrangements with the AMTS coast station licensees. In emergency and distress situations, services must be provided to ship stations without prior arrangements.

(d) AMTS systems providing private mobile radio service in lieu of public correspondence service are not required to be interconnected to the public switched network. AMTS systems providing public correspondence service must be interconnected to the public switched network, but the licensee may also offer non-interconnected services.